Supreme Court, U.S.
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No. 91-687

In The

Supreme Court of the United States

October Term, 1991

STATE OF MONTANA,

Petitioner,

v.

DONALD GLENN IMLAY,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed October 21, 1991
Certiorari Granted March 2, 1992

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6/05/90	70	REPORT OF PROBATION VIOLATION FILED BY IMLAY'S PROBATION OFFICER
6/11/90	71	PETITION FOR REVOCATION OF SUSPENDED SENTENCE Exhibit A attached to Petition includes letter from Imlay's therapist, Michael Sullivan, indicating Imlay as unacceptable for treatment because of his failure to accept responsibility for the acts of which he was convicted.

9/04/90	79	ORDER REVOKING SUSPENDED SENTENCE AND SENTENCING ORDER Probation revoked and defendant sentenced to five years in Montana State Prison. District court recommends that defendant not be eligible for parole until completion of sex offender treatment program at prison.
7/25/90	92	TRANSCRIPT OF PROBATION REVOCATION HEARING
8/06/91	96	JUDGMENT OF CONVICTION AND RESENTENCING ORDER On remand from Montana Supreme court, defendant sentenced to five years in Montana State Prison with credit for time served.

NOTICE OF LOCATION OF LOWER COURT OPINIONS AND ORDERS NOT REPRINTED IN THE JOINT APPENDIX

The following opinion and order have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

Opinion of the Montana Supreme Court dated June 18, 1991 ..... 1a

Order by the Montana Supreme Court denying the petition for rehearing dated July 23, 1991 ..... 26a

Tammy K. Plubell
Deputy County Attorney
Cascade County Courthouse
Great Falls, MT 59401
Telephone: (406) 761-6700
Attorney for Plaintiff

MONTANA EIGHTH JUDICIAL DISTRICT COURT,
CASCADE COUNTY

THE STATE OF MONTANA, Plaintiff, -vs- DONALD GLENN IMLAY, Defendant.	No. CDC-89-109 AFFIDAVIT AND MOTION FOR LEAVE TO FILE INFORMATION DIRECT (Filed May 10, 1989)

The undersigned Deputy County Attorney of Cascade County, Montana, being first duly sworn upon her oath, moves the Court for Leave to File Information charging the above-named Defendant with the crimes of COUNTS I, II and III: SEXUAL ASSAULT, FELONIES, as specified in MCA section 45-5-502 (1987), committed at Parkdale Grocery and attached house, Great Falls, Cascade County, State of Montana, on or about April 11, 1989, and for said Motion deposes and says:

The Court is informed that on April 11, 1989, at approximately 3:40 p.m., Great Falls Police Officers Perkins and Hickman were dispatched to the residence of Jane Doe and her mother. The officers interviewed Jane

Doe's mother who reported that when her daughter came home from school that afternoon she informed her mother that the owner of Parkdale Grocery had "played with her privates" while she was at the store. Jane Doe reported this incident to her teacher at Longfellow School, Mrs. Stubbs. Jane Doe's mother further reported that Jane Doe stayed with a friend on April 10, 1989. On April 11, 1989, at approximately 9:30 a.m., Jane Doe's mother picked up Jane Doe and took her home. Jane Doe changed her clothes, ate breakfast and left for school at approximately 10:30 a.m.

Officer Perkins and Officer Hickman then interviewed Jane Doe. Jane Doe reported after she left for school she immediately walked to Parkdale Grocery Store. She went inside the store and asked the man working behind the counter if her classmates had returned from a field trip. The man reported they had not. Jane Doe described the man as being older and having gray hair. She did not know his name but knew he was the owner of the store. Jane Doe reported the man then walked up to her, took her by the hand, and led her to the office which is next to the main portion of the store. The man sat in a chair and placed Jane Doe on his knee. The man then unbuttoned and unzipped her pants and began fondling her vaginal area. Jane Doe reported the man rubbed his hand and fingers over her "privates" for several minutes. The man then went back into the main part of the store at which time Jane Doe hid behind what she referred to as a safe in the office.

Jane Doe reported the man returned moments later and found Jane Doe hiding. Jane Doe's pants were still unzipped and the man once again fondled her privates

for several minutes. The man stopped and again went into the main portion of the store. Jane Doe reported she was frightened and felt very uncomfortable. Consequently, Jane Doe went to the basement in an effort to hide. She hid beneath a long wooden work bench with tools on it. She also zipped and buttoned her pants. Jane Doe thought she heard someone come into the basement.

After the person left the basement, she waited a few minutes and went back upstairs. The man again met her at the office. He took her by the hand and led her into the livingroom of his home which adjoins the store and office. The man sat in a chair and again placed Jane Doe on his lap. He again unbuttoned and unzipped Jane Doe's pants and rubbed her "privates" as he had done previously. Jane Doe reported the man was "digging" into her and also felt her "boobs". While the man was rubbing her vaginal area he asked, "Do you like it?" Jane Doe responded "No" and the man finally stopped. He refastened Jane Doe's pants and led her to the store. He then gave her a Tootsie Pop sucker and told her not to tell anyone.

Jane Doe reported she exited the store, walked to the alley behind the store and hid the sucker because she did not want the sucker under the circumstances. She later went to school and eventually reported these incidents to her teacher, Mrs. Stubbs. Jane Doe took the officers to the alley where she hid the sucker. She described the sucker as having a purplish-pink wrapper. Officer Perkins located a raspberry flavored Tootsie Pop sucker lying on the ground next to the southwest corner of a shed behind 1416 6th Avenue South. Officer Perkins pointed out the sucker and Jane Doe identified it as the one given to her

by the man in the store. The officers recovered the sucker and placed it into evidence at the Great Falls Police Department.

After recovering the sucker, the officers transported Jane Doe and her mother to the Columbus Hospital where Jane Doe was examined by Dr. Ellis. Jane Doe related the same information to Dr. Ellis which she had reported to the police officers. Dr. Ellis examined Jane Doe and did find abrasions in the region of the clitoris and surfaces of the labia.

Officers Perkins, Hickman and Scheele went to the Parkdale Grocery Store to contact the suspect. The officers earlier determined that the owner of the store was Donald Imlay, the Defendant. The Defendant is 56 years old with graying hair. The Defendant admitted he was the person working in the store at 10:30 that morning and that no other person was working in the store at that time. After the officers informed him of Jane Doe's report against him, he admitted seeing a girl of Jane Doe's description in his store about 10:30 that morning. He stated she had walked into his office and he found her hiding behind his filing cabinet. He stated he was unsure why she was hiding but speculated she was trying to skip school. The Defendant indicated the little girl had also gone and hid in the basement. He said he went down to try and find her but was unable to locate her. The officers located a filing cabinet in the Defendant's office which they believed Jane Doe mistook for a safe. The officers located a long wooden work bench in the basement. There were tools on top of the bench. The officers also located a candy jar near the front counter of the store which contained Tootsie Pops. Consequently the officers

were able to verify information given to them by Jane Doe. The Defendant denied having sexual contact with Jane Doe.

The State of Montana will prove by testimony of the witnesses whose names are endorsed on the Information as well as the physical evidence recovered, that the Defendant, DONALD GLENN IMLAY, did commit the crimes of COUNTS I, II and III: SEXUAL ASSAULT, FELONIES, in violation of MCA section 45-5-502 (1987); that said Deputy County Attorney has investigated the facts surrounding the charges against said Defendant and believes there is probable cause to believe that the Defendant committed the offenses here charged; and all of which was done contrary to the form, force and effect of the statute in such case made and provided, and against the peace and dignity of the State of Montana.

DATED: May 9th, 1989.

/s/ Tammy K. Plubell
Deputy County Attorney
Cascade County, Montana

SUBSCRIBED AND SWORN TO BEFORE ME May 9th, 1989.

/s/ Joel G. Roth
DISTRICT COURT JUDGE

ORDER

Upon reading the foregoing Motion for Leave to File Information and it appearing that there is probable cause to believe the Defendant above-named committed the crimes charged;

IT IS HEREBY ORDERED that leave be granted to the above-named Deputy County Attorney to file the Information as asked for.

Defendant is to be admitted to bail in the sum of $5,000 - DOLLARS.

DATED: May 9th, 1989.

/s/ Joel G. Roth
DISTRICT COURT JUDGE

cc: County Attorney/Plubell
Defense Counsel - Billy Miller
CCSO

Tammy K. Plubell
Deputy County Attorney
Cascade County Courthouse
Great Falls, MT 59401
Telephone: (406) 761-6700
Attorney for Plaintiff

MONTANA EIGHTH JUDICIAL DISTRICT COURT,
CASCADE COUNTY

THE STATE OF MONTANA, Plaintiff, -vs- DONALD GLENN IMLAY, Defendant.	No. CDC-89-109 INFORMATION JOEL G. ROTH (Filed May 10, 1989)

The undersigned Patrick L. Paul, County Attorney of Cascade County, Montana, states: that an Affidavit having been filed and Leave of Court having been granted for the filing of an Information and before the filing of this Information, the above-named Defendant, DONALD GLENN IMLAY, on or about the day April 11, 1989, at Parkdale Grocery and attached house, Great Falls, Cascade County, Montana, committed the offenses of COUNTS I, II and III: SEXUAL ASSAULT, FELONIES, as specified in MCA section 45-5-502 (1987).

The facts constituting the offenses are:

COUNT I: SEXUAL ASSAULT, A FELONY. On or about April 11, 1989, the above-named Defendant, age 56,

knowingly subjected Jane Doe, age 7 and not his spouse, to sexual contact without consent by using his hand to fondle Jane Doe's vaginal area at the location of the office area of Parkdale Grocery Store;

COUNT II: SEXUAL ASSAULT, A FELONY. On or about April 11, 1989, the above-named Defendant, age 56, knowingly subjected Jane Doe, age 7 and not his spouse, to sexual contact without consent by again using his hand to fondle Jane Doe's vaginal area at the location of the office area of Parkdale Grocery Store. Count II happened at a separate time from Count I.

COUNT III: SEXUAL ASSAULT, A FELONY. On or about April 11, 1989, the above-named Defendant, age 56, knowingly subjected Jane Doe, age 7 and not his spouse, to sexual contact without consent by using his hand to fondle Jane Doe's vaginal area at the location of the Defendant's livingroom, which is attached to the Parkdale Grocery Store. Count III happened at a separate time from Counts I and II; all of which is contrary to the form, force and effect of the statute in such case made and provided, and against the peace and dignity of the State of Montana.

DATED this 9th day of May, 1989.

/s/ Tammy K. Plubell
COUNTY ATTORNEY
Cascade County, Montana

STATE OF MONTANA)
: ss.
County of Cascade)

The undersigned, being first duly sworn on his oath, deposes and says: That he is the duly appointed, qualified and acting County Attorney of Cascade County, State of Montana; that he has read the foregoing Information, knows the contents thereof and the matters, facts and things therein stated are true of his own knowledge, except those things stated on information and belief and that as to those he believes it to be true.

DATED this 9th day of May, 1989.

/s/ Tammy K. Plubell
COUNTY ATTORNEY

WITNESSES ON PART OF STATE:
Dan Loomis - GFPD
Bob Dykeman - GFPD
Dr. W. B. Ellis, Columbus Hospital, Great Falls, MT
Jane Doe
Jane Doe's Mother
Berkey A. Hamrell - 2226 Central Avenue West, #31, Great Falls, MT
Michelle M. Stubbs - Longfellow School, Great Falls, MT
Chris Hickman - GFPD
Donald Scheele - GFPD
Keith Perkins - GFPS

cc: County Attorney/Plubell
Defense Counsel - Billy Miller
Defendant - c/o Counsel
CCSO

J. Kim Schulke
Deputy County Attorney
Cascade County Courthouse
Great Falls, MT 59401
Telephone: (406) 761-6700
Attorney for Plaintiff

MONTANA EIGHTH JUDICIAL DISTRICT COURT,
CASCADE COUNTY

THE STATE OF MONTANA, Plaintiff, -vs- DONALD GLENN IMLAY, Defendant.	)	No. CDC-89-109 MOTION TO AMEND INFORMATION (Filed Sept. 5, 1989)

COMES NOW J. KIM SCHULKE, Deputy County Attorney in and for the County of Cascade, and pursuant to Section 46-11-403, MCA (1987), moves this Court for its order amending the Information filed in the above-entitled cause as follows: That Counts I, II and III: Sexual Assault, Felonies, in violation of MCA section 45-5-502 (1987), be amended to Sexual Assault, a Felony, in violation of MCA section 45-5-502 (1987), on the grounds and for the reason that it is in the interests of justice. The affidavit filed in support of the original Information also supports this Amended Information.

DATED this 5th day of September, 1989.

PATRICK L. PAUL,
COUNTY ATTORNEY

By: /s/ J. Kim Schulke
J. Kim Schulke, Deputy

ORDER

Good cause appearing;

IT IS HEREBY ORDERED that the Information filed in the above-entitled cause is amended as follows: That Counts I, II and III: Sexual Assault, Felonies, in violation of MCA section 45-5-502 (1987), be amended to Sexual Assault, a Felony, in violation of MCA section 45-5-502 (1987).

DATED this 5th day of September, 1989.

/s/ Joel G. Roth
DISTRICT COURT JUDGE

cc: Deputy Attorney/Schulke
Billy Miller, Attorney for Defendant
CCSO
GFPD

J. Kim Schulke
Deputy County Attorney
Cascade County Courthouse
Great Falls, MT 59401
Telephone: (406) 761-6700
Attorney for Plaintiff

MONTANA EIGHTH JUDICIAL DISTRICT COURT,
CASCADE COUNTY

THE STATE OF MONTANA, Plaintiff, -vs- DONALD GLENN IMLAY, Defendant.	No. CDC-89-109 AMENDED INFORMATION (Filed Sept. 5, 1989)

The undersigned Patrick L. Paul, County Attorney of Cascade County, Montana, states: that an Affidavit having been filed and Leave of Court having been granted for the filing of an Amended Information and before the filing of this Information, the above-named Defendant, DONALD GLENN IMLAY, on or about the day April 11, 1989, at Great Falls, Cascade County, Montana, committed the offense of SEXUAL ASSAULT, A FELONY, as specified in Section 45-5-502, MCA (1987).

The facts constituting the offense are: That the above-named defendant, age 56, knowingly subjected Jane Doe, age 7 and not his spouse, to sexual contact without consent by suing his hand to fondle Jane Doe's vaginal area and/or breasts at the location of (1) the counter area of

the Parkdale Grocery Store and/or (2) the office area of the Parkdale Grocery Store and/or (3) Defendant's living room which is attached to the Parkdale Grocery Store; all of which is contrary to the form, force and effect of the statute in such case made and provided, and against the peace and dignity of the State of Montana.

DATED: September 5, 1989.

/s/ J. Kim Schulke
Dep. COUNTY ATTORNEY
Cascade County, Montana

STATE OF MONTANA)
: ss.
County of Cascade)

The undersigned, being first duly sworn on his oath, deposes and says: That he is the duly appointed, qualified and acting County Attorney of Cascade County, State of Montana; that he has read the foregoing Amended Information, knows the contents thereof and the matters, facts and things therein stated are true of his own knowledge, except those things stated on information and belief and that as to those he believes it to be true.

DATED this 5th day of September, 1989.

/s/ J. Kim Schulke
Dep. COUNTY ATTORNEY

WITNESSES ON PART OF STATE:
Det. Bob Dykeman - GFPD
Dr. W. B. Ellis - Columbus Hospital, Great Falls, MT
Jane Doe
Jane Doe's Mother

Berkey A. Hamrell – 2226 Central Ave. W., #31, Great Falls, MT
Michelle M. Stubbs – Longfellow School, Great Falls, MT
Officer Keith Perkins – GFPD
Dr. Janet Hossack – Strain Building, Great Falls, MT
Deputy Jim Olson – CCSO
Francine Parsons – 626B 18th St. So., Great Falls, MT

cc: County Attorney/Schulke
Defense Counsel/Billy Miller
Defendant – c/o Counsel
CCSO

MONTANA EIGHTH JUDICIAL DISTIRICT COURT,
CASCADE COUNTY

THE STATE OF MONTANA, Plaintiff, vs DONALD GLENN IMLAY, Defendant.	)	CAUSE NO. CDC-89-109 JUDGMENT OF CONVICTION AND SENTENCING ORDER (Filed Oct. 19, 1989)

On October 17, 1989, the above named defendant, DONALD GLENN IMLAY, personally appeared in Court for the purpose of being Sentenced herein. Other appearances were as follows: the defendant's attorney Billy Miller and Deputy Cascade County Attorney Kim Schulke. The defendant was found GUILTY after a Jury Trial of the offense of SEXUAL ASSAULT, A FELONY which involved a juvenile girl. At the time that the jury verdict was returned the Court revoked the defendant's bail and ordered that he be held in custody pending Sentencing. A Pre-Sentence Investigation was ordered and Sentencing scheduled for this time. The Court has received the Pre-Sentence Investigation which was prepared by the Adult Probation and Parole Bureau of Great Falls, and furnished a copy thereof to both counsel prior to Sentencing. The Court notes that 36 letters have been presented to the Court in connection with this Sentencing hearing. Additionally a psychological evaluation report prepared by Charles E. Jones has been filed with the Court. The County attorney filed a letter from the Mental Health

Services Inc., together with standards for a Sex Offender Evaluation.

The County Attorney did not call any witnesses prior to Sentencing. The defendant's attorney called three witnesses to testify prior to sentencing.

Both the County Attorney and the defendant's attorney made a Sentencing recommendation to the Court.

The defendant was given a opportunity to make any statement or comments he wished prior to sentencing and he did make a statement to the court expressing sorrow for the criminal offense for which he was found guilty.

There was no legal reason shown why Sentencing should not be pronounced at this time.

The Court has considered the following matters in Sentencing this defendant.

The defendant was found guilty after a jury trial of sexually assaulting a juvenile girl at the Parkdale Grocery in Great Falls, Montana on April 11, 1989. The defendant has been incarcerated in the Cascade County jail for a period of 35 days. The defendant is 56 years of age and is a widower who has raised four children who are now adults. The defendant is presently unemployed but does have an extensive history of full time employment. The defendant has no military history. The Pre-Sentence report recommends that restitution be paid for any psychological or psychiatric expenses incurred by the victim, plus repayment to the Crime Victims Program for payments that have been made on behalf of the victim.

The defendant does not have a prior criminal record of either misdemeanors or felonies.

The defendant's wife of 36 years died of cancer in 1986. The defendant completed High School and has completed numerous vocational courses by correspondence.

The defendant's past employment history is noteworthy; he has worked on farms and ranches; he has worked at a lumber yard and and [sic] sawmill; he has worked for the Great Northern and Northern Pacific Railroads; he has worked 19-1/2 years for the Anaconda Mining Company in Great Falls; he has worked for Moat Industries; and he is a member in good standing with the Electricians Local Union; and is owner and operator of Parkdale Grocery in Great Falls for a number of years.

Mr. Imlay was evaluated by Charles E. Jones on September 29, 1989. Dr. Jones administered a psychodiagnostic evaluation and administered various tests. The report indicates that the defendant has no previous psychiatric treatment or consultation and there is no evidence of prior behavioral treatment. The defendant is not an alcoholic and does not use dangerous drugs. Dr. Jones placed the defendant in the middle 50% of the population in IQ achievement. The defendant was diagnosed by Dr. Jones as having Post Traumatic Stress Snydrome [sic]. The report indicates that there is no latent or bizarre psychotic episodes and there are no sexual connotations in his test results. The defendant is presently experiencing a regressive and mentally depressive state of mind and a sense of no where to turn. In view of the defendant's disturbed depressive condition, Dr. Jones does not recommend any further incarceration. The recommendation of Dr. Jones is a mental health therapeutic program of psychiatric work and counseling.

The recommendations for Sentencing in this case range from a recommendation from the County Attorney and the victim's mother to 20 years in the Montana State Prison to the defendant's attorney's recommendation of a five year Suspended Sentence. The Court has observed the defendant in the various proceedings in the courtroom and is cognizant of the many letters that have been received by friends of the defendant which are all very supportive of the defendant. The defendant has no prior criminal history and does not abuse alcohol or use dangerous drugs. The Court accepts the representations of the defendant's attorney that this defendant is not a dangerous person and that the present offense was an isolated incident which will not be repeated in the future. The Court concludes that a period of incarceration in the Montana State Prison is not appropriate in this case but rather a Suspended Sentence with supervised probation and expressed conditions would be the appropriate Sentence. The Court also is cognizant of the age of the defendant (56) and the fact that this defendant is presently suffering from some medical problems.

THEREFORE, IT IS HEREBY ORDERED that the defendant, DONALD GLENN IMLAY, is Sentenced to serve FIVE (5) years in the Montana State Prison. However, the execution of said Sentence is hereby Suspended except for the first 35 days thereof. The defendant is ordered to serve 35 days in the Cascade County jail but is given credit for the 35 days he has previously been incarcerated. During the Suspended portion of the Sentence the defendant shall be on formal supervised [probation] with the adult Probation and Parole Bureau of Great Falls and subject to their rules and regulations. In addition

thereto the defendant shall be under the following conditions during the Suspended Sentence:

1. The defendant is to immediately enroll in a sexual therapy program at his own expense and continue said program until his therapist deems further counseling and therapy unnecessary. The Court would recommend that the defendant obtain his therapy at the Sexual Offender Treatment Program located in Helena, Montana.

2. The defendant is required to pay for all psychological and psychiatric counseling costs incurred by the victim in this case. Additionally, the defendant is required to pay restitution for any monies spent by the Montana Crime[ ] Victims Program which were incurred by the victim. The amount of said resitution [sic] shall be determined by the defendant's probation officer and a repayment program established so that the defendant may pay the restitution in installments. All payments are to be made to the Clerk of District Court, Cascade County Courthouse, Great Falls, Montana.

3. The defendant is prohibited from being alone with any minor female child unless there is another adult present at all times.

IT IS FINALLY ORDERED that pursuant to Section 46-18-236 MCA, the mandatory statutory surcharge of $20.00 is hereby assessed against this defendant. Said amount is to be paid to the Clerk of District Court, Cascade County Courthouse, Great Falls, Montana, as soon as possible.

DATED this 18th day of October, 1989.

/s/ Joel G. Roth
DISTRICT JUDGE

cc: County Attorney/Schulke
Billy Miller
Defendant
Adult Probation & Parole
Cascade County Sherriff

J. Kim Schulke
Deputy County Attorney
Cascade County Courthouse
Great Falls, MT 59401
Telephone: (406) 761-6700
Attorney for Plaintiff

MONTANA EIGHTH JUDICIAL DISTRICT COURT,
CASCADE COUNTY

THE STATE OF MONTANA Plaintiff, -vs- DONALD GLENN IMLAY, Defendant.	No. CDC-89-109 PETITION FOR REVOCATION OF SUSPENDED SENTENCE (Filed June 11, 1990)

J. Kim Schulke, Deputy County Attorney in and for the County of Cascade, State of Montana, alleges:

That on the 13th day of September, 1989, the Defendant, was found guilty by jury trial of the crime of Sexual Assault, a Felony, and on the 17th day of October, 1989, execution of sentence was suspended for five (5) years; that the said Defendant has violated the terms of his probation as contained in the Report of Violation, attached hereto as Exhibit "A" and by this reference made a part hereof.

WHEREFORE, petitioner prays the Court order:

1. That a copy of this petition be served upon the Defendant;

2. That a Warrant of Arrest be issued for the apprehension of Defendant;

3. That, upon arrest of the Defendant, a date and time be scheduled for Defendant to appear before this Court to answer the allegations of the Petition;

4. That the suspension be revoked and sentence be executed.

DATED this 8 day of June, 1990.

PATRICK L. PAUL,
COUNTY ATTORNEY
By: /s/ J. Kim Schulke
J. Kim Schulke

cc: County Attorney/Schulke
Attorney for Defendant/Billy Miller
Defendant
Adult Probation and Parole – Barbara Nihill,
P.O. Box 1884,
CCSO Billings, MT 59103

STATE OF MONTANA
DEPARTMENT OF INSTITUTIONS
CORRECTIONS DIVISION

Report to: Honorable Joel Roth
8th Judicial District

Name: IMLAY, Donald

Crime: Sexual Assault (F)

Date of Sentence: 10/18/89

Present Location: PO Box 373, Absarokee, MT

Date: 6/1/90

Number: CDC 89-109

Sentence: 5 years suspended

Termination Date: 10/18/94

Status: Mt Probation

Type of Report: REPORT OF VIOLATION Exhibit A
(Filed June 5, 1990)

On 10/18/89 Donald J. Imlay was sentenced by Eighth Judicial District Court Judge Joel Roth to five (5) years at Montana State Prison for the crime of Sexual Assault (felony). All but 35 days of the sentence was suspended.

On the same date, Mr. Imlay was signed to probation by Probation/Parole [Officer] Jacqueline Lageson-Belluschi. On 10/30/89 he was transferred to the supervision of Probation/Parole Officer Barbara Nihill. He continues to be supervised by that officer at the present time.

Since the defendant was signed to supervision, the following violations have occurred.

VIOLATIONS

State Rule #4 EMPLOYMENT AND/OR PROGRAM: You shall seek and maintain employment, or maintain a program approved by the Board of Pardons or Probation and Parole Bureau and shall not change such employment or program without first obtaining permission from your supervising officer.

Mr. Imlay has not been employed or in a structured program of any kind since he was signed to probation on 10/18/89. He claims to be unable to work because of arthritis, and has made application for services/benefits through S.R.S. According to S.R.S. Counselor Tony Martinez, Mr. Imlay has been accepted for rehabilitation services. Mr. Imlay wants to be self-employed as a leather worker, and Mr. Martinez reports that S.R.S. funding will be provided to help purchase needed equipment. Mr. Imlay may also be receiving financial disability benefits from Social Security and is waiting for a decision on this.

The essential fact in this situation is that Mr. Imlay is unemployed and so has no structured time schedule with which to order his days. All of his time is "free" time, an undesirable condition for a sex offender. It is questionable whether self-employment as a leather craft worker would significantly alter Mr. Imlay's over-supply of unstructured time.

Court Rule #1: The defendant is to immediately enroll in a sexual therapy program at his own expense and continue

said program until his therapist deems further counseling and therapy unnecessary. The Court would recommend that the defendant obtain his therapy at the Sexual Offender Treatment Program located in Helena, Montana.

State Rule #14 SPECIAL CONDITIONS: Sex offender treatment.

Mr. Imlay contacted South Central Treatment Associates for his sex offender evaluation and treatment. However, Evaluator Mike Sullivan found the defendant's level of denial to be so great that attempts to enter him into a treatment program would be both unethical and non-productive. A copy of Mr. Sullivan's letter concerning this issue is attached.

SUMMARY OF ADJUSTMENT TO SUPERVISION

Mr. Imlay presents unique problems in supervision in that he claims to be physically unable to work and so has been unable to comply with the employment requirement, and also that he continues to deny commission of the crime of which he was found guilty, rendering himself as unable to comply with the sex offender treatment mandate.

It is the opinion of this officer that, as an untreated sex offender, Mr. Imlay represents a danger to the community. This is exacerbated by the fact that he is unemployed and so has an excessive amount of unstructured time at his disposal, and also by the fact that he resides in a remote, outlying community where he cannot be closely monitored.

These factors – the defendant's unemployment, unsuitability for mandated sex offender treatment, and relative inaccessibility for supervision – place him at significant risk for re-offending.

RECOMMENDATION

It is recommended that Mr. Imlay be returned to Court for revocation proceedings.

Respectfully submitted,

/s/ Barbara Nihill
Barbara Nihill, State
Probation/Parole Officer III
Billings, MT

SOUTH CENTRAL TREATMENT ASSOCIATES

2139 Broadwater Avenue/Suite H
Billings, Montana 59102
406 652-4546

Maxine Jacobson, M.S.W., A.C.S.W.
Licensed Clinical Social Worker

Michael D. Sullivan, M.S.W.
Licensed Clinical Social Worker

May 22, 1990

Barbara Nihill
Adult Probation/Parole
P.O. Box 1884
Billings, MT 59103

re: Donald Imlay

Dear Ms. Nihill:

As we have discussed, the following is a summary of my contacts with Mr. Donald Imlay (DOB: 12/5/32). Mr. Imlay has been seen in this office on six separate occasions for a total of approximately six hours. In addition, he has been administered a polygraph examination and some psychological testing. I have also reviewed the police statement in this matter.

As you are aware, a sexual offender treatment program focuses very heavily on the individual client's responsibility for their sexually assaultive behavior. From the outset of my contacts with Mr. Imlay he has maintained a denial of the charges of sexual of [sic] assault for which

he has been convicted. Efforts were made by this examiner to try to break through this denial. These efforts, however, have been unsuccessful. As a result, Mr. Imlay is not viewed as an acceptable candidate for outpatient sexual offender treatment. He does not admit a problem in this area nor does he admit having ever committed a sexual offense. It would not be ethical or appropriate to continue to see him beyond this point. A sexual offender treatment program cannot serve the function of an enabler to insulate an individual from their personal responsibility. Until Mr. Imlay reaches a point in which he can assume responsibility for the acts for which he has been convicted, he would not be viewed as treatable in an outpatient sexual offender treatment setting.

If you have any questions or concerns please feel free to contact me.

Sincerely,

/s/ MD Sullivan
Michael D. Sullivan, M.S.W.
Licensed Social Worker

MDS:jh

MONTANA EIGHTH JUDICIAL DISTRICT COURT,
CASCADE COUNT

THE STATE OF MONTANA, Plaintiff, vs DONALD GLENN IMLAY, Defendant.	CAUSE NO. CDC-89-109 ORDER REVOKING SUSPENDED SENTENCE AND SENTENCING ORDER (Filed Sept. 4, 1990)

On June 13, 1990, the State, through the Cascade County Attorney, filed herein a Petition to Revoke the Suspended Sentence of defendant, Donald Glenn Imlay.

On July 6, 1990, the defendant personally appeared in Court and answered NOT TRUE to the alleged violations set forth in the Petition to Revoke.

An evidentiary hearing was held on August 31, 1990, on said Petition to Revoke Suspended Sentence. Appearances at the hearing were as follows: the defendant, Donald Glenn Imlay; the defendant's attorney Billy Miller; and Deputy Cascade County attorneys Kim Schulke and Lisa Bazant.

The State called two witnesses who were sworn and testified: Barbara Nihill and Michael D. Sullivan. The defendant was sworn and testified.

Following the presentation of the testimony and the admission into evidence of the defendant's exhibit "A" (a schedule of the defendant's earnings from his leather work in August 1990), both Kim Schulke and Billy Miller

orally argued the Petition to Revoke and made sentencing recommendations.

The following shall constitute the Court's Findings of Fact and Conclusions of Law and Order herein.

The defendant was found guilty of Sexual Assault, a Felony, involving a minor female girl after a jury trial herein which concluded on September 13, 1989.

The defendant was sentenced on October 17, 1989 to FIVE (5) years in the Montana State Prison with the execution of all of said sentence suspended except the first 35 days. The defendant was ordered to serve 35 days in the Cascade County jail but given credit for 35 days he had been incarcerated. The defendant was placed on formal supervised probation with the Adult Probation and Parole Bureau of Great Falls, Montana. An additional condition (along with others which are not involved herein) imposed by the Court, was that the defendant was to immediately enroll in a sexual thereapy [sic] program at his own expense and continue said program until his therapist deems further counselling and therapy unnecessary.

The Petition to Revoke alleged two violations of conditions of the suspended sentence. The first related to the requirement that the defendant seek and maintain employment or maintain a program approved by the Adult Probation and Parole Bureau. The evidence presented with respect to said alleged violation established that the defendant had applied for employment as an electrician at the mines around Absorkee, Montana, where he resided with his mother. However, because of

the defendant's physical condition (he was under doctor's orders not to walk) he was denied employment. The defendant also applied for a job of custodian with the Absorkee school district, but was also denied employment there (for the same reason). The defendant began working with the Department of Social Rehabilitation Services and was accepted in a program of vocational-rehabilitation involving leather work. The department paid for a correspondence course in leather work and also furnished some tools to the defendant. The defendant began performing leather work under the program and sold $320.00 of leather goods in August 1990. The defendant had applied for disability benefits while on probation but said requested benefits were denied. The defendant's supervising probation officer, Barbara Nihill, testified that the defendant did not have steady employment and his working time was not supervised.

The Court concludes that the defendant was making a bona fide effort to obtain employment and was accepted into a vocational – rehabilitation program and was actively pursuing said program. The Court concludes that the State has failed to establish by a preponderance of the evidence that the defendant was in violation of State Rule #4 which required that the defendant seek and maintain employment.

The second alleged violation related to the condition that the defendant immediately enrol in a sexual offender thereapy [sic] program. State's witness, Michael D. Sullivan, a licensed social worker, testified with regard to that condition. The defendant was referred to Mr. Sullivan by his supervising probation officer, Barbara Nihill. Sullivan is a co-director of South Central T[r]eatment

Associates in Billings, Montana, which provides a therapy program on an out-patient basis for sex offenders. The defendant and Sullivan met six times between November 20, 1989 and March 23, 1990 for a total of approximately 5½ hours. The defendant was not accepted into the program in Billings because he (the defendant) continued to deny the sexual assault of which he had been found guilty. In fact, during the defendant's testimony at this evidentiary hearing, he denied the sexual assault. The sex offender thereapy [sic] program in Billings will not accept a person for therapy who denies commission of the sex offense.

The defendant also contacted Ron Silvers who is in charge of the Sexual Offender Treatment Program in Helena in order to apply for admission to that program. However, the evidence established that he was not accepted into that program either, apparently for the same reason as his non-acceptance into the Billings program. The testimony of Sullivan established that there are no out-patient sex offender treatment programs that will accept a person who denies having committed the sexual offense.

The only in-patient sex offender treatment program is located inside the prison at the Montana State Prison.

The Court concludes that the defendant has violated the condition of his suspended sentence by not enrolling (not being amenable to treatment and hence, not acceptable into an out-patient treatment program) in a sex offender treatment program and said violation was proven by a preponderance of the evidence.

After the filing of the Petition to Revoke Suspended Sentence, the Court received numberous [sic] letters from the defendant's family and friends, all supportive of the defendant. However, the Court must accept the guilty verdict of the jury. The defendant's continuing denial of guilt forecloses his acceptance into an out-patient sex offender treatment program. However, the most important condition on the defendant's suspended sentence was that one relating to his immediate enrolling in a sex offender treatment program. Because the only viable alternative is an in-patient treatment program, the Court concludes that the defendant's suspended sentence must be revoked and the defendant ordered to serve FIVE (5) years in the Montana State Prison with credit for 35 days.

THEREFORE, IT IS HEREBY ORDERED that the defendant's FIVE (5) year Suspended Sentence is revoked.

IT IS ALSO ORDERED that the defendant is sentenced to serve FIVE (5) years in the Montana State Prison with credit for 35 days already served.

It is recommended to the Warden of the Prison that the defendant not be eligible for parole until he has completed the sexual offender treatment program at the Prison. However, it is also recommended that upon completion of the program, the defendant be considered for parole. The defendant is designated as a non-dangerous offender for parole eligibility purposes.

IT IS FINALLY ORDERED that the defendant is remanded to the custody of the Cascade County Sheriff for transportation to the Montana State Prison.

DATED this 4th day of September, 1990.

/s/ Joel G. Roth
DISTRICT JUDGE

cc: County Attorney/Schulke
Billy Miller
Defendant
Cascade County Sheriff
Adult Probation and Parole Bureau
Warden/Montana State Prison
St Ind
GFPD

MONTANA EIGHTH JUDICIAL DISTRICT COURT,
CASCADE COUNTY

THE STATE OF MONTANA, Plaintiff, vs DONALD GLENN IMLAY, Defendant.	CAUSE NO. CDC-89-109 JUDGMENT OF CONVICTION AND RE-SENTENCING ORDER (Filed Aug. 6, 1991)

On August 2, 1991, the above named defendant, DONALD GLENN IMLAY, personally appeared in Court for the purpose of being re-sentenced herein. Other appearances were as follows: the defendant's attorney Billy Miller and Cascade County Attorney Patrick Paul and Deputy Cascade County Attorney Tammy Plubell.

The defendant was convicted of Sexual Assault, a Felony in the above case and was originally sentenced by a sentencing order dated October 18, 1989. Basically, the original sentence was a five year sentence in the Montana State Prison with the execution of the Sentence being Suspended except for the first 35 days. The defendant was ordered to serve 35 days in the Cascade County jail but was given credit for the 35 days he was previously incarcerated. The defendant was placed on supervised probation during the suspended sentence with several

conditions attached thereto. The condition on his suspended sentence, which gives rise to the problem in this case, was the condition which required the defendant to immediately enroll in a sexual treatment program and to complete the program.

A Petition to Revoke the Suspended Sentence was filed on or about June 8, 1990. The defendant answered Not True to the alleged violations in the petition to revoke his suspended sentence. An evidentiary hearing was held on the petition to revoke, and following said hearing the Court revoked the defendant's five year suspended sentence for the reason that the defendant had not enrolled in any sexual offender treatment program. The defendant was sentenced to serve five years in the Montana State Prison.

The defendant's sentence following the revocation hearing was appealed to the Montana State Supreme Court.

In Cause No. 90-493 decided June 18, 1991, the Montana Supreme Court vacated the sentence imposed herein and remanded the case to this Court for re-sentencing.

At the beginning of the hearing herein the county attorney argued that the defendant should be re-sentenced at this time as if this were the original sentencing hearing. The defendant's attorney argued that the sentence of this Court following the revocation proceeding should be the sentence to be considered at this time. After hearing arguments from both counsel the Court concludes that it is the original sentence herein which is to be considered and not the sentence imposed after the revocation proceeding.

Both the county attorney and the defendant's attorney made a sentencing recommendation to the Court.

The Court has considered the following matters in sentencing the defendant at this time. The defendant was found guilty after a jury trial of Sexual Assault, a Felony, involving a minor female child. The defendant has denied committing the offense from the beginning of the case. During testimony at trial the defendant denied committing the offense. The most important condition on the defendant's five year suspended sentence was the defendant immediately enroll in a sexual offender treatment program. The problem which has arisen in this case is that there is no sexual offender treatment program which will accept an individual unless that individual admits having committed a sexual offense. In the present case the defendant denies having committed the sexual offense. Therefore, the two sexual offender treatment programs which the defendant attempted to enroll in refused to accept him because he denied having committed the sexual offense. Based on the defendant's failure to enroll in a sexual offender treatment program, the County Attorney filed a Petition to Revoke his Suspended Sentence. The Court, as indicated above, after an evidentiary hearing did revoke the defendant's five year suspended sentence and ordered that he serve five years in the Montana State Prison for violating a condition on his suspended sentence.

The Montana Supreme Court, in its decision herein, ruled that a criminal defendant could not be compelled to admit to committing a criminal offense even though he had been found guilty of a criminal offense after a jury trial. Because the defendant's refusal to admit to having

committed the sexual assault meant that he was not eligible for any sexual offender treatment program, the defendant could not comply with the condition on his suspended sentence which required that he enroll in a sexual offender treatment program. The Montana Supreme Court therefore vacated the sentence and remanded the case to this court for re-sentencing.

The Court concludes that because the original sentence herein was premised on the condition that the defendant would enroll and complete a sexual offender treatment program, the Court concludes that since that option is no longer available to the Court that the defendant should be sentenced to a period of incarceration at the Montana State Prison. The offense for which the defendant was found guilty is a serious offense and involved a juvenile girl. The Court concludes that for the protection of society the defendant should be incarcerated.

Had the Court known at the time of the original sentence herein that this defendant would not be accepted in a sexual offender treatment program, the Court would not have imposed a suspended sentence but rather would have imposed a prison sentence.

THEREFORE, IT IS HEREBY ORDERED that, DONALD GLENN IMLAY, is sentenced to serve FIVE (5) years in the Montana State Prison at Deer Lodge, Montana. The defendant is given credit for the 35 days he was incarcerated prior to his original sentence herein and he is also given credit for the time he has been incarcerated in the Montana State Prison following the sentence imposed at the conclusion of the revocation proceeding.

For purposes of parole eligibility, the Court declares this defendant to be a non-dangerous offender.

IT IS FINALLY ORDERED that the defendant be remanded to the custody of the Cascade County Sheriff to be held in custody pending transportation to the Montana State Prison.

DATED this 5th day of August, 1991.

/s/ Joel G. Roth
DISTRICT JUDGE

cc: County Attorney/Paul & Plubell
Billy Miller
Defendant
Adult Probation & Parole Bureau
Cascade County Sheriff
Montana State Prison/Warden
ST ID
GFPD